

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:05cv253**

WILLIAM N. CLINKSCALES, JR.,

Plaintiff,

Vs.

FIRST CITIZENS BANK,

Defendants.

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ROSEBORO
ORDER

THIS MATTER is before the court on defendant's Motion to Dismiss. Plaintiff, who is proceeding *pro se*, is advised in accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), that defendant has filed a Motion to Dismiss and that he is now obligated to

- (1) file a "response" to such motion showing why this court has subject-matter jurisdiction over his claims; or
- (2) file a notice of voluntary dismissal.

Defendant contends that this court lacks subject-matter jurisdiction over his claim inasmuch as plaintiff has (1) failed to allege the violation of any federal law (which is federal question jurisdiction), or (2) failed to allege that the parties are diverse (which is diversity jurisdiction). Plaintiff is advised that the presentment and dishonor of checks is a matter of state law and that no diversity could possibly exist inasmuch both he and defendant are citizens of the State of North Carolina.

Rule 12(b)(1) provides for dismissal where the court lacks jurisdiction over the subject matter of the lawsuit. Lack of subject-matter jurisdiction may be raised at any time either by a litigant or the court. Mansfield, C. & L.M.R. Co. v. Swan, 111 U.S. 379, 382 (1884). When a court considers its subject-matter jurisdiction, the burden of proof is on the plaintiff. Adams v. Bain, 697 F.2d 1213, 1219 (4th Cir. 1982). Having considered defendant's motion

and reviewed the pleadings, the court enters the following Order.

ORDER

IT IS, THEREFORE, ORDERED that plaintiff file either his response to defendant's Motion to Dismiss (#5) or a voluntary dismissal within 14 days of the issuance of this Order.

Signed: August 30, 2005

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

